IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1010 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANANBHAI NIRANJANBHAI SHETH

Versus

MUNICIPAL CORPORATION OF AHMEDABAD

Appearance:
MR PV NANAVATI for Petitioner
MR MG NAGARKAR for Respondent

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 24/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

#. Against the order made by the Small Causes Court (Court No. 10), Ahmedabad on 21.11.97, the present Special Civil Application is filed. Facts briefly required to be narrated are as under.

#. Petitioner is the owner and occupier of a tenement bearing No. 2815-0321-00-008-L, bearing Survey No. /C 00188/B/5 + B + 1 to B/6-7 of Dariapur-Kazipur, Ahmedabad. It is a self-occupied property. It is pointed out that the property is situated within the city of Ahmedabad and respondent - Corporation assesses and recovers property tax under Section 127 of the Bombay Provincial Municipal Corporations Act (hereinafter to be referred to as "the BPMC Act"). The property tax consists of general tax, conservancy tax and water tax. In para 8 of the petition, the petitioner has pointed out that the self-occupied property was being assessed and taxed for municipal taxes from the year 1984 to 1991 with yearly rateable value of Rs. 72/-. In the petition, chart is given indicating all the details. But suffice it to say that the rateable value was fixed by the competent court at Rs. 72/-. However, for the year 1993-94, respondent-Corporation fixed the gross rateable value at Rs. 1236/-, against which Municipal Valuation Appeal No. 20676/93 was preferred challenging the enhancement of rateable value enhancing from Rs. 72/- to Rs. 1236/-. The learned Judge quashed the bill issued by the respondent-Corporation, however, fixed the rateable value at Rs. 1236/- and therefore, the present petition is filed.

#. From the impugned judgment - Annexure : A, it is clear that in past, the appellant filed appeals for the previous years from 1983-84 to 1992-93 and till 1991-92 by the judgment, gross rateable value was reduced to Rs. 72/- and the appeal for the year 1992-93 being Municipal Valuation Appeal No.350/93 was pending in Court No. 5 at the relevant time. It seems that the trial court in para 6 expressed the view that the premises is self-occupied, however, the appellant has to prove that the value of the premises and the rateable value is according to the standard rent. The appellate court further held that the appellant failed to show as to what is the value of the appeal premises and has not produced any sale deed or certificate of Assessor regarding the value of the premises. The appellate court also held that the appellant has proved that the bill is premature and was issued prior to disposal of the objection application. As a matter of fact, the learned Judge was of the view that the objection application was submitted and that was not disposed of and before the disposal of the objection

application, bill was issued and therefore, it was required to be quashed.

#. Mr. Nanavati, learned counsel submitted that in the instant case from the bill itself, it is clear that it is a self-occupied property. From the judgment delivered by the Small Cause Court earlier, it was pointed out that the rateable value was fixed at Rs. 72/- and therefore, there was no question of producing any documentary evidence as to the value of the appeal premises or the sale deed or certificate of government assessor regarding the value of the property.

#. It appears that on behalf of the respondent, it was contended that the taxpayer is liable to pay full amount of tax and appeal cannot be entertained unless full amount is paid. It was further contended that if the Court quashes the bill, then the amount should be fixed for depositing arrears for the disputed year and then looking to the locality, gross rateable value should be fixed at the rate of Rs. 1236/- which is at the rate of 00.10 ps. per month. Mr. Nanavati, learned counsel appearing for the petitioner submitted that in the instant case, without considering the objections, bill was issued. However, the respondent requested that the court should fix the amount at the rate at which it was fixed by the Corporation. In absence of decision on objection application, bill was issued and before the Court, the respondent could not point out any changes in the property or the nature of use. It is required to be noted that the appropriate authority would be the respondent-Corporation for issuance of bill. It is for the respondent-Corporation to hear the objections in accordance with law and to issue the bill. The Court below could have directed that pending the hearing of the appeal, after considering the objections and personal hearing to the taxpayer, fresh bill may be issued, or could have called upon the Corporation to place the relevant record of the assessment of the property and thereafter could have called upon the assessee to place the evidence, but that is not done in the instant case. On behalf of the respondent-Corporation, before us it was submitted that the matter may be remanded to the Small Cause Court to consider the said aspect.

#. As against this, Mr. Nanavati submitted that in the memo of appeal before the Small Cause Court, it was pointed out in para 2 about the rateable value fixed by the court at Rs. 72/- from 1983-84 to 1991-92. It was also pointed out that the property is very old and after the aforesaid judgments were delivered no change

whatsoever has been made in the property and therefore, as per the judgment delivered by the Court, the rateable value should be fixed at the rate of Rs. 72/-. Mr. Nanavati further submitted that in the instant case, the Corporation has accepted the judgments delivered by the Small Cause Court and the judgments are final. He submitted that in view of the Division Bench judgment of this Court once rateable value has been determined as long as premises is self-occupied by the owner, in absence of any addition or alteration in the premises, there is no scope for re-determination of rateable value.

#. A grievance was made before the Small Causes Court as well as before this Court that despite the order being passed by the court and despite the fact that applications were made to make necessary corrections as per the judgment, corrections have not been made either in the assessment list or in the demand register and even for subsequent years by blindly following their unamended record, bills are issued and citizens are put to a lot of harassment. Every year in this fashion bills are issued and the appellant is required to approach the lower appellate court as well as the High Court and that too for the rateable value of Rs. 72/-. It goes without saying that it would cause a lot of hardships to the citizens. It is the duty of the respondent-Corporation to immediately amend the concerned register or assessment list after the judgment is pronounced. As a matter of fact, they were not required to wait for an application to be submitted by the assessee, as the Municipal Corporation was the party before the Court, and, therefore, it was the duty of the Municipal Corporation to make necessary changes. Under the circumstances, it is directed that assessment list or demand register shall be amended/corrected soon after the judgment is delivered by the Small Cause Court.

#. Even before the lower appellate court it was submitted that the respondent-Corporation, by not following the judgment is compelling the assessee to spend huge amount for litigation. A serious and genuine grievance is made before us that the officers of the Corporation are either acting in haste and without deciding objection applications are issuing the bills, or are acting carelessly and negligently by not considering the record and without applying mind about the identity and use of the property, are issuing bills, as a result of which many lawyers are required to waste their time to assist the litigants and it is not only waste of money of litigants but also waste of public time and public funds. Before us, Mr. Nanavati submitted that the Municipal

Corporation is not carrying out orders of the Court, as a result of which the Court work is also increased apart from the fact that the citizens who are law abiding citizens are required to spend huge amounts for litigation, time of others is also wasted by the officers of the Corporation. A request was made that not only special compensation be awarded, but the amount of tax paid with interest at the rate of 18% per annum should be refunded. Like the other Acts, when from the taxpayers there is delayed payment, interest is charged and at the time of refund excess amount is returned with interest to the assessee. There is no reason why the Corporation, which is enjoying the funds of the assessee, which it is not entitled to, should not be directed to refund the amount with 15% interest. It is directed that the amount of refund shall be paid with interest @ 15% per annum. Mr. Nanavati submitted that before the lower appellate court, it was requested that the value of the property should be assessed at the rate of Rs. 72/- in view of the judgments delivered by the Small Cause Courts in Municipal Valuation Appeals. Mr. Nanavati placed strong reliance on the judgment of the Division Bench of this Court (Coram: B.N.Kirpal, Chief Justice as His Lordship then was and R.K. Abichandani, J.) in the case of Municipal Corporation of Ahmedabad v. Moti Apartment Owners Association [1994 (2) GLR 1662] and submitted that the Division Bench after considering the decisions of the Apex Court in the case of Diwan Daulatrai Kapoor v. New Delhi Municipal Committee [AIR 1980 SC 541], Balbir Singh & Ors. v. M/s. M.C.D. [AIR 1985 SC 339], Municipal Corporation, Ahmedabad v. Oriental Fire and General Insurance Company Ltd., [1994 (2) GLR 1498] and Rajnikant Jeshingbhai Sheth & Ors. v. Rameshchandra Kantilal Bhatt & Ors. [1982 (2) GLR 71], in para 6, the Court pointed out as under.

"One point however, needs to be reiterated, whether the rateable value so fixed in the case of self-occupied property can be revised at different intervals. The answer to this question is very obvious and is in the negative. The reason for this is very simple. The rateable value of self-occupied premises has to be fixed either by determining hypothetical rent on the basis of the reasonable return of the cost of construction and the cost of land or on the basis of properties which are let and which are similar in nature. Once determination takes place by applying the said principle, the said rateable value cannot possibly undergo any change. As long as the premises remain in self-occupation,

> the rateable value for the succeeding years will have to be that which was determined in accordance with law for the first year. The only occasion when the Corporation or the Municipality will get a right to revise the rateable value for the succeeding years will be, if the owner occupant makes additions or alterations or incurs any capital expenditure on that property itself. It has to be clearly understood that carrying out minor repairs or white-washing cannot be regarded as a capital expenditure so as to permit enhancement of rateable value. A question may also arise whether a rateable value can be increased in case of change of ownership. Here again the rateable value is relatable to the property in question and if the premises continued to be the self-occupied property by the new owner, change in the ownership would not and should not ipso-facto result in the increase of the rateable value. It is only if further additions or alterations are undertaken and capital expenditure incurred by the new owner, can there be any change in the rateable value of self-occupied premises."

Thus, it is very clear that once there is determination of rateable value, the said rateable value cannot possibly undergo any change. The Court emphasized that as long as the premises remains in self-occupation, the rateable value of the succeeding year will have to be that which was determined in accordance with law for the preceding year. The Court also pointed out that even if there is change of ownership, but premises continued to be self-occupied, should not ipso facto result into the increase of rateable value. In the instant case, there is nothing to point out that the owner has made additions or alterations or has incurred any capital expenditure on the property. The Court also pointed out that carrying out minor repairs or white washing cannot be regarded as capital expenditure so as to permit enhancement of rateable value.

#. We are of the view that so far as the property is concerned, merely because some amount is required to be incurred by the owner to keep the property in good condition, the value cannot be increased. In the instant case, there is nothing on record produced by the Corporation to show that in view of the additions or alterations made in the property, rateable value was required to be increased. We are required to state that in the instant case the said rateable value was fixed by

the appellate court at the rate of Rs. 72/-. In the absence of any changes as pointed out by the Division Bench in case of Moti Apartment (supra) there is no scope for change in G.R.V.

##. In view of what is stated hereinabove, this petition is allowed and the order passed by the Small Causes Court in so far as the direction for issuance of fresh bill for the year 1993-94 fixing the gross rateable value at Rs. 1236/- is quashed and set aside. It is directed that for the aforesaid reasons, for the year 1993-94 the gross rateable value of Rs. 72/= must be determined as per the order made by the Small Causes Court earlier; Consequently, the excess amount shall be refunded with 15% interest.

##. In several matters, citizens are required to approach the Court for one reason or the other for no fault of their's. It is required to set an example so that litigants may not suffer unnecessarily. Under the circumstances, we direct the respondent-Corporation to pay costs of Rs. 5,000/- of this petition to the petitioner within a period of two weeks from today without fail. It is directed that the effect of the judgments delivered by the Small Cause Court, Ahmedabad as well as the judgment of this Court shall be given by Ahmedabad Municipal Corporation forthwith. Rule is made absolute.

[B.C. PATEL, J.] [SHARAD D. DAVE, J.]

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